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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

_____ )	CV-
FEDERAL TRADE COMMISSION, )	
)     TEMPORARY RESTRAINING ORDER	
)     WITH ORDER ALLOWING IMMEDIATE	
)     ACCESS AND ORDER TO SHOW CAUSE	
)     WHY A PRELIMINARY INJUNCTION	
)     SHOULD NOT ISSUE	
WAZZU CORPORATION, )	
)     a corporation,	
JAYME AMIRIE, )	
)     an individual,	
KENNETH GHARIB, )	
)     an individual, and	
KIRK WALDFOGEL, )	
)     an individual,	
)     Defendants.	
_____ )	

Plaintiff Federal Trade Commission ("Commission"), pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), filed a complaint for permanent injunction and other relief, including consumer redress, and applied *ex parte* for a temporary restraining order, including an order allowing immediate access to the Defendants' business premises and records

1 and an order to show cause why a preliminary injunction should not  
2 issue pursuant to Rule 65 of the Federal Rules of Civil Procedure.  
3 The Court has considered the pleadings, declarations, exhibits,  
4 and memoranda filed in support of the Commission's application and  
5 makes the following findings of fact:

6 1. This Court has jurisdiction of the subject matter of  
7 this case, and there is good cause to believe it will have  
8 jurisdiction over all parties.

9 2. There is good cause to believe that Defendants Wazzu  
10 Corporation, Jayme Amirie, Kenneth Gharib, and Kirk Waldfogel have  
11 engaged in and are likely to engage in acts and practices that  
12 violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and that  
13 the Commission is likely to prevail on the merits of this action.

14 3. There is good cause to believe that immediate and  
15 irreparable harm will result from the Defendants' ongoing  
16 violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),  
17 unless the Defendants are restrained and enjoined by Order of this  
18 Court, and that in accordance with Local Rule 7.18.2 the interest  
19 of justice therefore requires that the Commission's Application be  
20 heard without prior notice to the Defendants.

21 4. There is good cause to believe that immediate and  
22 irreparable damage to the Court's ability to grant effective final  
23 relief for consumers in the form of monetary redress or  
24 restitution will occur from the disposition, destruction,  
25 alteration or concealment by the Defendants of their records  
26 unless the Defendants are immediately restrained and enjoined by  
27 Order of this Court, and unless immediate access to Defendants'  
28 business premises is allowed for the purpose of inspecting and

1 copying Defendants' documents and records. There is thus good  
2 cause for issuing this Order without prior notice to the  
3 Defendants of the Commission's application, pursuant to Federal  
4 Rule of Civil Procedure 65(b) and Local Rule 7.18.2.

5 5. Weighing the equities and considering the Commission's  
6 likelihood of success in its causes of action, this Temporary  
7 Restraining Order is in the public interest.

8 6. No security is required of any agency of the United  
9 States for issuance of a restraining order. Fed. R. Civ. P.  
10 65(c).

## 11 ORDER

### 12 Definitions

13 A. "Document" is synonymous in meaning and equal in scope  
14 to the usage of the term in Federal Rule of Civil Procedure 34(a),  
15 and includes writings, drawings, graphs, charts, photographs,  
16 audio and video recordings, computer records, and other data  
17 compilations from which information can be obtained and  
18 translated, if necessary, through detection devices into  
19 reasonably usable form. A draft or non-identical copy is a  
20 separate document within the meaning of the term.

21 B. "Internet services" means any services related to  
22 providing access to the Internet, including the provision of e-  
23 mail or e-mail to fax service, or creating, designing or hosting  
24 any advertisements or pages on the World Wide Web.

25 C. "Defendants" means Defendants Wazzu Corporation  
26 ("Wazzu"), Amirie, Gharib, and Waldfogel, and their agents,  
27 servants, employees, attorneys, and all persons or entities  
28 directly or indirectly under the control of any of them, and all

1 other persons or entities in active concert or participation with  
2 any of them who receive actual notice of this Order by personal  
3 service or otherwise, and each such person.

4  
5 **I.**

6 **PROHIBITED BUSINESS ACTIVITIES**

7 **IT IS THEREFORE ORDERED** that Defendants Wazzu Corporation,  
8 Amirie, Gharib, and Waldfogel, and their agents, servants,  
9 employees, attorneys, and all persons or entities directly or  
10 indirectly under the control of any of them, and all other persons  
11 or entities in active concert or participation with any of them  
12 who receive actual notice of this Order by personal service or  
13 otherwise, and each such person, in connection with the sale,  
14 advertising, offering for sale, or marketing of Internet services,  
15 are hereby temporarily restrained and enjoined from:

16 A. Falsely representing, expressly or by implication, that  
17 consumers will not be charged for Internet services before the end  
18 of a purportedly free trial period;

19 B. Falsely representing, expressly or by implication, that  
20 consumers who cancel within a free trial period will not be  
21 charged;

22 C. Falsely representing, expressly or by implication, that  
23 consumers will not be assessed any charges for Internet services  
24 until thirty days after Defendants have provided consumers with  
25 information that will enable consumers to access and review the  
26 website designed and hosted by Defendants;

1 D. Causing any consumer to be charged or billed for  
2 Internet services before the expiration of any free trial period  
3 Defendants have purported to offer;

4 E. Causing any consumer to be charged or billed for  
5 Internet services without having obtained the consumer's explicit  
6 authorization;

7 F. Failing to return, credit or otherwise refund any  
8 payment for Internet services that is received after the date this  
9 Order is served on Defendant Wazzu from any consumer who agreed,  
10 prior to service of this Order on Wazzu the issuance of this  
11 Order, to accept Defendant Wazzu's Internet services, and who has  
12 notified Wazzu of an intent or desire to cancel such services  
13 before the consumer received access to, or notice of the contents  
14 of, any website designed by Wazzu for the consumer, or before the  
15 expiration of thirty days following the date on which the consumer  
16 received access to, or notice of the contents of, any website  
17 designed by Wazzu for the consumer;

18 G. Falsely representing, expressly or by implication, that  
19 any consumer is legally obligated to pay any charge for Internet  
20 services;

21 H. Falsely representing any other fact that is likely to  
22 affect a consumer's choice of whether to accept or purchase  
23 Internet services.

24  
25 **II.**

26 **PRESERVATION OF RECORDS**

27 **IT IS FURTHER ORDERED** that Defendants Wazzu, Amirie, Gharib  
28 and Waldfogel, and their agents, servants, employees, attorneys,

1 and all persons or entities directly or indirectly under the  
2 control of any of them, and all other persons or entities in  
3 active concert or participation with any of them who receive  
4 actual notice of this Order by personal service or otherwise, and  
5 each such person, are hereby temporarily restrained and enjoined  
6 from destroying, erasing, mutilating, concealing, altering,  
7 transferring or otherwise disposing of, in any manner, directly or  
8 indirectly, any documents that relate to the business practices or  
9 business or personal finances of Defendant Wazzu, Defendant  
10 Amirie, Defendant Gharib, or Defendant Waldfogel.

11  
12 **III.**

13 **RECORD KEEPING/BUSINESS OPERATIONS**

14 **IT IS FURTHER ORDERED** that Defendants Wazzu, Amirie, Gharib  
15 and Waldfogel are each hereby temporarily restrained and enjoined  
16 from:

17 A. Failing to make and keep an accurate accounting of all  
18 assets, liabilities and equity, which accounting shall include the  
19 creation and retention of documents that, in reasonable detail,  
20 accurately, fairly, and completely reflect their incomes,  
21 disbursements, transactions, and use of money, beginning  
22 immediately upon service or actual notice of this Order; and

23 B. Creating, operating, or exercising any control over any  
24 business entity, including any partnership, limited partnership,  
25 joint venture, sole proprietorship or corporation, without first  
26 serving on counsel for the Commission a written statement  
27 disclosing: (1) the name of the business entity; (2) the address  
28 and telephone number of the business entity; (3) the names of the

1 business entity's officers, directors, principals, managers and  
2 employees; and (4) a detailed description of the business entity's  
3 intended activities.

4  
5 **IV.**

6 **ACCESS TO Defendants' BUSINESS PREMISES AND RECORDS**

7 **IT IS FURTHER ORDERED** that Defendants Wazzu, Amirie, Gharib,  
8 and Waldfogel, and their agents, servants, employees, attorneys,  
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1 Commission's representatives as necessary to allow them to  
2 efficiently copy to disk, tape or other medium, in a non-  
3 proprietary format, any and all audio recordings and digital audio  
4 files, which are in the Defendants' custody, control or  
5 possession, that are in any way related to telephone conversations  
6 to which prospective customers of Internet services are a party,  
7 including the type of recordings that are played for consumers who  
8 call to dispute charges from Defendant Wazzu. The Commission's  
9 representatives may remove documents from such premises so they  
10 may be inspected or copied, but shall not, without good cause  
11 shown, retain any such documents beyond the close of the third  
12 business day after removing them. The Commission's  
13 representatives may also photograph and videotape the inside and  
14 outside of all premises to which they are permitted access by this  
15 Order, and all documents and other items found on such premises.  
16 Law enforcement personnel, including the United States Marshal  
17 Service, may accompany the Commission's representatives in  
18 implementing the provisions of this Paragraph in Order to keep the  
19 peace and maintain the security of the Commission's  
20 representatives. No one shall interfere with the Commission's  
21 inspection of the Defendants' documents. The Commission's access  
22 to Defendants' documents pursuant to this provision shall not  
23 provide grounds for any Defendant to object to any subsequent  
24 request for documents served by the Commission pursuant to Rule 34  
25 of the Federal Rules of Civil Procedure. Provided, however, that  
26 the Commission shall not subsequently request that any Defendant  
27 produce any document that the Commission copied pursuant to this  
28 provision.



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V.

**SERVICE OF ORDER BY Defendants**

**IT IS FURTHER ORDERED** that Defendants Wazzu, Amirie, Gharib and Waldfogel shall immediately provide a copy of this Order to each affiliate, partner, division, sales entity, successor, assign, employee, agent, attorney, and representative, including each independent telemarketing sales room and each billing agent or billing aggregator used by the Defendants in the sale of or billing for their services, and shall, within ten (10) days from the date of entry of this Order, serve upon the Commission a sworn statement that they have complied with this provision of the Order, which statement shall include the names and street addresses of each such person or entity who received a copy of the Order.

VI.

**CONSUMER CREDIT REPORTS**

**IT IS FURTHER ORDERED** that pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), any consumer reporting agency served with this Order shall promptly furnish consumer reports as requested concerning Defendant Wazzu, Defendant Amirie, Defendant Gharib, or Defendant Waldfogel to the Commission.

VII.

**DURATION OF TEMPORARY RESTRAINING ORDER**

**IT IS FURTHER ORDERED** that the Temporary Restraining Order granted herein shall expire on \_\_\_\_\_, 1999, unless

1 within such time, the Order, for good cause shown, is extended for  
2 an additional period not to exceed ten days, or unless it is  
3 further extended with the consent of the parties.

4  
5 **VIII.**

6 **ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION**

7 **IT IS FURTHER ORDERED**, pursuant to Federal Rule of Civil  
8 Procedure 65(b) and Local Rule 7.17, that Defendants Wazzu,  
9 Amirie, Gharib and Waldfogel shall appear before this Court on the  
10 \_\_\_\_ day of \_\_\_\_\_, 1999, at \_\_\_\_\_ o'clock \_\_\_\_m.,  
11 to show cause, if there is any, why this Court should not enter a  
12 preliminary injunction, pending final ruling on the Complaint  
13 against Defendants Wazzu, Amirie, Gharib, and Waldfogel, enjoining  
14 them from further violations of Section 5(a) of the Federal Trade  
15 Commission Act, 15 U.S.C. § 45(a) and imposing such additional  
16 relief as may be appropriate.

17  
18 **IX.**

19 **EXAMINATION OF WITNESS**

20 **IT IS FURTHER ORDERED** that there will be no direct  
21 examination of witnesses at the preliminary injunction hearing in  
22 this matter.

23  
24 **X.**

25 **SERVICE OF PLEADINGS**

26 **IT IS FURTHER ORDERED** that Defendants, in responding to this  
27 Court's Order to Show Cause, shall serve all memoranda,  
28 declarations and other evidence on which they intend to rely not

1 later than 4:00 p.m. (PT) of the fourth business day prior to the  
2 preliminary injunction hearing set in this matter. Service on the  
3 Commission shall be performed by personal delivery to counsel for  
4 the Federal Trade Commission or their designated agent at 10877  
5 Wilshire Blvd., Suite 700, Los Angeles, California 90024. The  
6 Commission may serve and file a supplemental memorandum of points  
7 and authorities based on evidence discovered subsequent to the  
8 filing of its Complaint by no later than 4:00 p.m. (PT) of the  
9 fourth business day prior to the preliminary injunction hearing,  
10 and may serve and file a reply to the Defendant's opposition by no  
11 later than 4:00 p.m. on the day prior to the preliminary  
12 injunction hearing; service may be made by delivering a copy to  
13 the Defendants' business address at 10175 Slater Avenue in  
14 Fountain Valley, California.

15  
16 **XI.**

17 **RETENTION OF JURISDICTION**

18 **IT IS FURTHER ORDERED** that this Court shall retain  
19 jurisdiction of this matter for all purposes.

20 / / /

1 No security is required of any agency of the United States  
2 for the issuance of a restraining order. Fed. R. Civ. P. 65(c).

3  
4 SO ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 1999,  
5 at \_\_\_\_\_ a.m./p.m.

6  
7 \_\_\_\_\_  
8 United States District Judge

9 Presented by:

10 \_\_\_\_\_  
11 JOHN D. JACOBS  
12 TANYA NATHAN  
13 Federal Trade Commission  
14 10877 Wilshire Boulevard, Suite 700  
15 Los Angeles, California 90024  
16 (310) 824-4360 or 824-4317 (ph.)  
17 (310) 824-4380 (fax)

18 Attorneys for Plaintiff  
19 FEDERAL TRADE COMMISSION  
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